BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its Own Motion, to make adjustments to its high-cost distribution mechanisms and make revisions to its reporting requirements	Application No. NUSF-108 Progression Order No. 3

JOINT REPLY COMMENTS OF QWEST CORPORATION d/b/a/ CENTURYLINK QC and UNITED TELEPHONE COMPANY OF THE WEST d/b/a CENTURYLINK, CITIZENS TELECOMMUNICATIONS COMPANY OF NEBRASKA d/b/a FRONTIER COMMUNICATIONS OF NEBRASKA, AND WINDSTREAM

The Nebraska Public Service Commission ("Commission") opened the above referenced docket on December 19, 2017 to consider making changes to the use of Nebraska Universal Service Fund ("NUSF") support for the Rate of Return ("ROR") carriers. Parties filed comments on March 5, 2018. On March 12, 2018 Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively "CenturyLink") requested the opportunity to file reply comments in this proceeding. On March 19, 2018, the Commission issued an Order granting CenturyLink's request and stated that it would accept reply comments until April 12, 2018. CenturyLink, Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska, and Windstream[1] (the "Joint Commenters") appreciate the opportunity to file these joint reply comments.

As CenturyLink stated in its initial comments, the Commission should treat all recipient companies' rural customers equally when it comes to the distribution of NUSF support. The Commission's focus should be on ensuring all Nebraskans have access to quality telecommunications and broadband service at reasonable rates. Whether the providing carrier is regulated by the Federal Communications Commission ("FCC") as price cap or ROR is irrelevant. It is about the Nebraska

[1] Windstream Nebraska, Inc., McLeodUSA Telecommunications Services, LLC, PAETEC Communications, LLC, Windstream Communications, LLC., Windstream IT-Comm, LLC, Windstream KDL, LLC, Windstream Norlight, LLC, Windstream NTI, LLC, Windstream of the Midwest, Inc., Windstream Systems of the Midwest, Inc., Business Telecom, LLC, DeltaCom, LLC, and EarthLink Business, LLC are collectively referred to herein as "Windstream."

customer. No Nebraska customer should receive less support based on such arcane federal distinctions. It certainly is not a distinction based in Nebraska statute.

The Rural Independent Companies ("RIC"), in its comments, introduced the framework of a distribution model for the ROR companies in Nebraska. Joint Commenters have several concerns with this proposal as it seeks to create significant differences in the distribution methodologies between ROR carriers and price cap carriers.

For price cap carriers, the portion of NUSF support that is dedicated to broadband deployment is withheld. Carriers must submit an application for Commission review detailing specifics of the proposed project, including a description of the project, a list of the census blocks impacted, the number of living units impacted, and estimated costs. In addition to going through Commission review, the applications are put out for public notice so that other interested broadband providers can challenge the application. If the Commission and other providers are satisfied, the application is approved. The price cap carrier may then proceed with the project, but distribution of the NUSF support for the project is not made until the expenditure has been made and the carrier submits the required documentation to the Commission. The result is full accountability that the NUSF support is being used appropriately.

RIC's proposal for the ROR companies differs substantially from the process that the Commission has implemented for price cap carriers. Under RIC's proposal, ROR companies would make a filing with the Commission annually that "pre-identifies the actual project(s) that will be built during a specific time period, to the extent that NUSF High Cost Program funding is provided, and following completion of the build-out the ROR carrier confirms to the Commission the accomplishment of the project(s)."[2] There would be no approval by the Commission, no chance for review by competing

[2] See *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and to make revisions to its reporting requirements,* Application No. NUSF-108 Progression Order No. 3, Comments of the Rural Independent Companies in Response to Order Seeking Comment ("RIC Comments"), page 6.

carriers to ensure the funds are not being used to overbuild in areas where sufficient broadband service is already available, and no requirement for the companies to submit documentation to receive reimbursement for the investment or that the investment was even made. This proposal lacks accountability, despite RIC's assertion that the process "will facilitate the Commission's verification that ROR carriers utilized the CapEx portion of annual NUSF High Cost Program support for the purpose of constructing the broadband build-out projects identified to the Commission during a specified funding year."[3] RIC states that "[i]t is a recognized fact that ROR carriers have deployed and continue to deploy broadband-capable networks"[4] and this fact "negates any need for some form of pre-approval, project-based deployment model"[5] as is used for the price cap carriers. Similarly, price cap carriers also have deployed and continue to deploy broadband-capable networks. Nevertheless, the Commission has determined that price cap carriers are required to submit applications for each broadband project for which they wish to use NUSF funding and obtain Commission approval before moving forward. In addition, price cap carriers are not reimbursed for their project investment until after the expenditure has been made and reviewed, while the ROR carriers would be funded either before or during project construction.

The Commission has a long-held practice of requiring carriers to submit documentation supporting the investment made prior to providing reimbursement for grant projects.[6] Allowing the

[3] *Id*, p. 4
[4] *Id*, p.10
[5] *Id*, pp. 10-11
[6] In NUSF-69, the Commission spelled out the reimbursement process for approved grants from the Dedicated Wireless Fund: "The Commission approves reimbursement up to the estimated construction costs contained in the application for the five approved sites or the actual cost of construction on each site, whichever is lower...Viaero must first make the investment and file a request for reimbursement with the NTIPS Department...The dedicated wireless program will reimburse Viaero for reasonable expenditures made related to the cell sites approved in this Order. Once the investment is made, Viaero shall file a request for support, provide the NTIPS Department with copies of the invoices and shall certify to the Department that it had made the described investment for the provision, maintenance and upgrading of facilities and services in the described rural areas." Order Granting Application issued February 10, 2009, page 6. The Commission used a similar process for NUSF-77 and NUSF-92 broadband grant projects and price cap companies use this process for reimbursement of broadband grant projects under NUSF-99.

ROR companies to receive their funding up front and simply provide a list of projects to the Commission deviates significantly from past Commission practice. Further, the proposed process raises several accountability questions that the Commission must address:

1. What information will be provided to the Commission as part of the annual filing? Will the filing include information regarding the census blocks that will be impacted and the estimated cost of completing the project? Will other providers have the opportunity to challenge a project in the annual filing?
2. Will the Commission review and approve the proposed projects?
3. Will the Commission be given an accounting of the actual costs incurred by the ROR carrier for each of the projects on the list?
4. Will the ROR carrier be required to provide documentation to the Commission supporting the actual investment? If so, what steps will the Commission take if the actual costs come in less than the estimated costs?

RIC further states that "the current NUSF accountability framework associated with PC carriers is ill-advised and should not be instituted for the ROR carriers....The Orders entered by the Commission in Application No. NUSF-99 set forth the Commission's reasoning that the reforms addressed were and are specifically applicable to PC carriers. Such conditions do not exist for the ROR carriers."[7] Joint Commenters respectfully disagree.

In NUSF-99, the Commission stated, "[P]rice cap carriers have unique challenges, serving very rural and remote areas as well as urban populations where they face competitive pressures. In addition, due to the multi-state operations of price cap carriers, it can be difficult for the Commission to track the use

[7] RIC Comments, p. 11

of NUSF support for the expansion of broadband access deployed by price cap carriers in Nebraska."[8] However, most, if not all, of the ROR carriers also face competitive pressures in their exchanges. In addition, many of the ROR companies have diverse operations which can make it difficult for the Commission to ensure that the NUSF support is being used as intended. Many of the ROR companies have CLEC affiliates that provide service outside of their ILEC service territory, sometimes at rates below what the ILEC in that exchange, or the affiliated ILEC, is charging.[9]

Further, RIC notes that the process the Commission uses to approve and grant broadband funding for the price cap carriers is at odds with the Commission's objective of the "creation of more broadband-capable networks."[10] RIC states that a significant portion of the funds that have been allocated to the price cap companies for broadband grants, going back to 2016, remains unspent and further states that "it is certainly reasonable to conclude that the Commission's prior approval requirement has proven to be a considerable barrier to accomplishment of the Commission policy supporting broadband build-out to underserved or unserved areas of Nebraska."[11] If the pre-approval process that the Commission uses for the price cap companies is considered to be a barrier to the timely build-out of a broadband capable network, then the Commission should develop a new process to be

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[8] See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program,* Application No. NUSF-99, Order Seeking Further Comment and Setting Hearing, entered June 16, 2015, p. 5.

[9] For example, Cambridge Telephone offers voice service for $19.95 and has a CLEC affiliate (Pinpoint) that provides voice service in Indianola and Oxford for $17.50. Similarly, Hemingford Telephone offers voice service for $19.90 while its CLEC affiliate Mobius offers voice service in Alliance, Bridgeport, Chadron, Crawford/Whitney, and Sidney for $17.50. Three Rivers Telco provides voice service to its ILEC customers for $20.00 while its affiliate, Three Rivers Communications, offers voice service in Ainsworth, Long Pine, O'Neill, and Valentine for $18.00. *See* Nebraska Public Service Commission 2017 Annual Report on Telecommunications. Further research shows that American Broadband is providing voice service in Emerson, Laurel, Lyons, Oakland, Pender, Tekamah, Wakefield and Wayne, potentially at a rate of $15.59 (*see* http://www.abbnebraska.com/wp-content/uploads/2017/04/ntap_lifelineclec_6_13_11.pdf, viewed March 28, 2018) , while customers in its ILEC exchanges are paying $19.95 (*see* http://www.abbnebraska.com/wp-content/uploads/2017/04/ntap_lifelineilec_6_13_11.pdf, viewed March 28, 2018).

[10] RIC Comments, p. 11

[11] *Id*, p. 12

used by all carriers rather than adopt a significantly different process for the ROR carriers.[12] RIC's proposal amounts to the ROR carriers telling the Commission to "trust me" with no accountability. Joint Commenters reiterate that the Commission should not treat carriers differently simply because of the way the carrier is regulated by the FCC.

Regarding unsubsidized competition, RIC asserts that "the Commission should not be constrained by the narrow definition of 'unsubsidized' established by the FCC related to the receipt of 'high-cost' support."[13] Instead, RIC argues that the Commission should determine that "where the service area of a new entrant is not co-extensive with the ROR carrier, then that new entrant should not be viewed as an unsubsidized carrier."[14] This definition of "unsubsidized" is substantially different (and vastly less restrictive) than the definition the Commission uses to determine whether a project area is being served by an unsubsidized carrier for price cap carriers, even though the price cap carriers also face competition that is not co-extensive with their service areas. The Joint Commenters believe that using RIC's proposed definition would allow the ROR companies to use NUSF support to deploy broadband or to increase speeds to their existing networks in areas where competition already exists rather than to extend broadband service to unserved areas.

In the price cap carriers service areas, there are no competitors that are co-extensive, and there are likely none in the ROR companies service areas either. It is well established that competing broadband companies such as the cable companies provide service within the city limits, but usually do not extend service beyond the city limits into the rural parts of the exchange. Therefore, in virtually all instances the ROR company will be able to show that the service area of the unsubsidized provider is not "co-extensive" with the ROR carrier. The ROR carrier can then include a project on its annual filing with the

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[12] As discussed below, a backlog has developed while the price cap carriers and Staff have been working out implementation issues. Moving forward, a common understanding of the parameters of the program could ease this backlog.
[13] *Id*, p.13
[14] *Ibid*

Commission that would increase the broadband speeds or build out broadband within an exchange where a competing company is already providing service. Very limited funding is available to expand broadband services for rural Nebraskans, and carriers should not be allowed to use NUSF support to upgrade speeds in competitive areas; rather NUSF should be used to deploy networks for Nebraskans that lack broadband service.

Price cap carriers, in their applications for NUSF broadband grant support, are not allowed to use support to extend service to a census block where an unsubsidized carrier is providing service at sufficient speeds. Indeed, the Commission has reduced the grant amounts on projects where it has found, using the FCC Form 477 data, that a competing carrier is providing service to one or more census blocks in the project area.[15] Allowing a ROR carrier the opportunity to use NUSF support for broadband deployment in a census blocks served by a competing carrier should not be allowed.

RIC also suggests that any price cap carrier NUSF broadband grant support that has not been approved for project deployment within a certain timeframe should be returned to the NUSF for re-distribution to other carriers. This would be discriminatory to the price cap carriers and treat customers of those carriers as "second class citizens" on two counts. First, under the RIC's proposal, only price cap companies would be required to submit applications to the Commission for approval of broadband grant projects. Therefore, only price cap companies would be subject to the threat of losing some NUSF support that has been allocated to them. Second, any unused funds that are returned to the NUSF for re-distribution would result in increased funding that is available to the ROR carriers, benefitting those carriers over the price cap carriers. This would place the ROR carriers into the position, and provide

[15] *See* In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Universal Service High-Cost Program: CenturyLink Broadband Grant Requests 2016, Application No, NUSF-99.04, entered August 29, 2017 and In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Universal Service Fund High-Cost Program: Windstream Nebraska, Inc., Broadband Grant Requests 2016, Application No. 99.03, entered November 28, 2017.

them incentive to participate in the challenge process for the price cap carriers in order to transfer additional funding their direction.

The Joint Commenters agree that the funding that has been allocated to price cap companies should be used timely. However, as RIC acknowledges, the process the Commission currently uses for price cap carriers may have created a "considerable barrier"[16] to the use of that funding. If the Commission continues to use the pre-approval process, then on a prospective basis after the existing backlog is addressed, the Commission should allow companies 18 months to submit applications for support. The Commission should not require that applications for all funding be *approved* within 18 months as a company may submit an application believing it would be approved within the required timeframe, but unforeseen circumstances may delay Commission approval.

Joint Commenters also have a concern with RIC's proposal to allow those companies that have built broadband throughout their service territory to use "the CapEx percentage of its NUSF High Cost Program support for cost obligations incurred for prior broadband deployment or to realize a return on the FTTH investment associated with the build-out."[17] If any carrier can provide documentation showing that they have broadband service built out to their entire service territory, that carrier should be able to use all of its NUSF high-cost support for operating costs associated with the maintenance and provision of broadband and voice service.

In summary, RIC's proposal creates a process for the use of NUSF support for broadband deployment by the ROR carriers that differs dramatically from the process that is currently used by the price cap companies, thereby discriminating against one class of rural customers over another solely because of what company serves them. RIC's proposal is considerably less prescriptive than the process that the Commission has implemented for price cap carriers. The Commission should not treat

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[16] RIC Comments, p.12

[17] *Id* p. 6

recipients of NUSF support, and their rural subscribers, differently. The Commission should treat all rural consumers the same regardless of the company serving them and promote rules that govern all providers serving rural Nebraskans. The Joint Commenters encourage the Commission to develop an objective methodology for determining the amount of NUSF support that all carriers, both ROR and price cap, must use for broadband deployment as well as a process that all carriers are to use for obtaining approval for broadband projects.

Dated this 12th day of April, 2018.

Respectfully submitted by Joint Commenters,

By: ______________________

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of April, 2018, a true and correct copy of the foregoing was delivered to the following as indicated below:

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